

REMARKS

Claims 1-21 are pending in this Application, with claims 11-20 having been previously withdrawn. Claim 1 is amended with this Response. Claim 23 is added. An RCE entering the above amendments is respectfully filed herewith.

Applicant respectfully thanks the Examiner for removing the rejection under 35 U.S.C. §112 second paragraph.

Rejections under 35 U.S.C. §103(a)

Claims 1-9 and 21 have been rejected under 35 U.S.C. §103(a) as being obvious over United States Patent No. 6,005,073 to Hultin ("Hultin" hereinafter) in view of United States Patent No. 5,436,024 to Rogols ("Rogols" hereinafter). Applicant respectfully traverses this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant's claim 1 has been amended to recite *inter alia*,

"adjusting pH of said water to maintain said pulp at substantially neutral pH."

Neither Hultin nor Rogols, taken alone or in combination, teach a adjusting the pH of water to maintain the pulp at a substantially neutral pH. Instead, referring to column 5, lines 1-37, Hultin teaches mixing the protein with an aqueous liquid at a pH below about 3.5 to attain a low pH protein solution. This low pH protein solution is obviously contrary to the neutral pH recited in Applicant's amended claims. As Rogols is does not teach washing of pulp with water at all (and is not used as such by the Examiner), Rogols does not remedy this deficiency of Hultin. For at least this reason, Applicant respectfully asserts that the proposed combination of Hultin and Rogols does not teach

every element of Applicant's claims.

In addition, "Applicant can rebut a presumption of obviousness based on a claimed invention that falls within a prior art range by showing "(1) [t]hat the prior art taught away from the claimed invention...or (2) that there are new and unexpected results relative to the prior art." *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1322, 73 USPQ2d 1225, 1228 (Fed. Cir. 2004)." MPEP 2144.05

Applicant again respectfully points out that claim 1 recites *inter alia*,

"washing said initial pulp to obtain a washed pulp containing a residual fraction of lipids and sarcoplasmic proteins comprised between 0.1 and 3% of the weight of the pulp."

Referring to page of the Office Action⁴ (page 5 in the previous Office Action), while the Examiner concedes that Hultin fails to disclose the above quoted claim element, the Examiner again goes on to allege that the element is obvious in that "without a showing of unexpected results, the residual fraction of lipids and sarcoplasmic proteins in washed pulp cannot be considered critical." In response, Applicant respectfully provided the following, which demonstrated criticality of the above referenced claim element.

As mentioned above (please see MPEP 2144.05), an Applicant can rebut a presumption of obviousness if the prior art teaches away from the claimed invention, or there are new and unexpected results relative to the prior art. Applicant respectfully asserts that both of these conditions exist with regards to Hultin. Referring first to the "teaching away from" condition, Applicant respectfully notes that the pH in Hultin is taught to be adjusted to about 3.5 (col. 3, lines 49-60, col. 5, lines 28-39) to obtain a to low pH protein solution. This low pH protein solution is then treated **to separate insoluble impurities including lipids, fats, oils**, etc by centrifugation. At col. 5, lines 38-39 Hultin states that these impurities **degrade and render the product unacceptable**. Accordingly, since Hultin explicitly states lipids are **unacceptable** in a surimi base, Applicant respectfully asserts that Hultin very clearly teaches away from maintaining a residual fraction of lipids in such a food product.

Referring now to the “unexpected results” condition, Applicant’s disclosure (as opposed to Hultin and the state of the prior art in general) teaches that maintenance of lipids and sarcoplasmic protein in the finished product considerably raises a yield of the overall process (please see paragraphs 0151 and 0152 of Applicant’s Publication). In an exemplary embodiment taught in Applicant’s disclosure, it is respectfully shown that maintenance of 1.2% micro-encapsulated lipids produces a yield of 42%, while maintenance of 0.2 % micro-encapsulated lipids produces a yield of only 30%. Thus, a raising of the lipid content of the product by merely 1% allows for a 12% raise in yield. This improvement is unexpected in that it is obviously greater than an “expected result” when compared with (i.e. taken “relative to”) the Hultin teaching of lipid presence being “unacceptable” to the product (please MPEP 717.02(a) for a discussion on “greater than expected results”). In fact, any positive result achieved via lipid presence would be considered unexpected relative to the “unacceptable” teaching of Hilton.

The Examiner rebutted Applicant’s “teaching against” aspect of the above at page 8 of the Office Action by stating that Hultin teaches a residual fraction of lipids and sarcoplasmic proteins from .12% to .14% (column 15, Table 2) which is “identical to the quantity presently claimed.” Contrary to this assertion by the Examiner, Applicant respectfully points out that this .12% to .14% teaching of Hultin is clearly not identical to the .1% to 3% range claimed by Applicant. Instead, this Hultin range merely overlaps the lower end of Applicant’s claimed range. As such, the teaching against arguments reiterated above are strengthened by the fact that Hultin teaches lower lipid content to be clearly desirable (throughout column 15), and thus inherently teaches against the higher end of Applicant’s claimed range.

The Examiner has also rebutted Applicant’s “unexpected results” aspect of the above at page 9 of the Office Action by stating that, given the “identical” nature of the .12% to .14% range disclosed in Hultin, it is clear that the product would display the same yield increases relative to a product without lipid. In response to this assertion, again respectfully points out that the .12% to .14% range is not identical to Applicant’s claimed range. Further the fact that column 15 of Hultin stresses a lowering of lipid content indicates that a lipid content increase would not be expected to provide beneficial a yield benefit to one of ordinary skill in the art.

Accordingly, for at least the reasons set forth above, Applicants respectfully assert that one of ordinary skill at the time of Applicants' invention would not have a motivation to modify the Hilton reference as proposed by the Examiner. Accordingly, Applicants respectfully submit that *prima facie* obviousness does not exist regarding claims 1-9 and 21 with respect to the proposed combination of Hilton and Rogols.

Claim 10 has also been rejected under 35 U.S.C. §103(a) as being obvious over Hultin in view of Rogols and WO 01/62888 to Shah ("Shah" hereinafter). Applicants respectfully traverse this rejection.

Claim 10 depends from claim 1. Thus, for at least the reasons set forth above, Applicants respectfully submit that *prima facie* obviousness does not exist regarding claim 10 with respect to the proposed combination of Hilton and Rogols. As Shah does not remedy the deficiencies of the proposed combination of Hultin and Rogols, Applicants respectfully submit that *prima facie* obviousness does not exist regarding claim 10 with respect to the proposed combination of Rogols, Hilton, and Shah.

Applicant further and respectfully notes that claim 23 recites a range (.15% to 3%) that does not include any overlap with Hultin.

Conclusion

Applicants believe that all of the outstanding objections and rejections have been addressed herein and are now overcome. Entry and consideration hereof and issuance of a Notice of Allowance are respectfully requested.

Applicants hereby petition for any extension of time under 37 C.F.R. 1.136(a) or 1.136(b) that may be necessary for entry and consideration of the present Reply.

If there are any charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact Applicants' attorneys at the below-listed telephone number concerning this Amendment or otherwise regarding the present application.

Respectfully submitted,
CANTOR COLBURN LLP

By: /Daniel R. Gibson/
Daniel R. Gibson
Registration No. 56,539
CANTOR COLBURN LLP
20 Church Street
22nd Floor
Hartford, CT 06103
Telephone: 860-286-2929
Facsimile: 860-286-0115
Customer No. 23413

Date: December 7, 2009